

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 CARL W. SONNE
Deputy Attorney General
4 State Bar No. 116253
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3164
7 Facsimile: (619) 645-2061
Attorneys for Complainant

THIS IS NOT A DISCIPLINARY
ACTION OR FINAL DECISION
OF THE BOARD

8
9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2011-21

12 **EDDY JOHN SECCO**
13 **9881 Irvine Center Drive, Suite 200**
14 **Irvine, CA 92618-4307**

A C C U S A T I O N

15 **Certified Public Accountant Certificate No.**
16 **83513**

Respondent.

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.
22 2. On or about July 2, 2002, the California Board of Accountancy issued Certified
23 Public Accountant Certificate Number 83513 to Eddy John Secco (Respondent). The Certified
24 Public Accountant Certificate was in full force and effect at all times relevant to the charges
25 brought herein and will expire on June 30, 2013, unless renewed.
26
27
28

JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (CBA), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 5100 states:

After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

.....
(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

5. Section 5062 states that a "licensee shall issue a report which conforms to professional standards upon completion of a compilation, review or audit of financial statements.

6. Section 5107(a) of the Code states:

The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing.

7. Section 5109 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.

REGULATIONS

8. Title 16, California Code of Regulations, section 58 (Board Rule 58) provides that "licensees engaged in the practice of public accountancy shall comply with all applicable professional standards, including but not limited to generally accepted accounting principles and generally accepted auditing standards."

PROFESSIONAL STANDARDS

9. Professional standards¹ of practice pertinent to this Accusation for a financial statement compilation, include, without limitation, *Generally Accepted Accounting Principles*² (GAAP) applicable to the performance of a compilation, and *Statements on Standards for Accounting and Review Services* (SSARS) issued by the American Institute of Certified Public Accountants. The SSARS standards of practice (denoted with "AR") pertinent to this Accusation and the engagements at issue include, without limitation, the following SSARS Nos. 1 and 8 standards:

a. AR 100.01 states in part:

The accountant should not submit unaudited financial statements of a nonissuer to his or her client or a third party unless, as a minimum, he or she complies with the provisions of this section applicable to a compilation engagement.

a. Compilation of financial statements. If the accountant performs a compilation, a communication to management is required. The type of communication depends on the following.

1. If the accountant is engaged to report on compiled financial statements or submits financial statements to a client that are or reasonably might be expected to be used by a third party, see paragraphs .13 - .23 for reporting requirements.

¹ All references herein to standards and other authoritative literature are to the versions in effect at the time the compilations were performed.

² "Generally Accepted Accounting Principles" (GAAP) are the basic postulates and broad principles of accounting pertaining to business enterprises. These principles establish guidelines for measuring, recording, and classifying the transactions of a business entity. "Generally Accepted Auditing Standards" (GAAS) are the standards prescribed for the conduct of auditors in the performance of an examination of management's financial statements. See *SEC v. Arthur Young & Co.*, 590 F.2d 785, 788 nn. 2 & 4 (9th Cir. 1979).

2. If the accountant submits financial statements to a client that are not reasonably expected to be used by a third party, see paragraphs .24 - .27 for required communications to management.

b. AR 100.04 states in part:

Certain terms are defined for purposes of this Section as follows.

Submission of financial statements. Presenting to a client or third parties financial statements that the accountant has prepared either manually or through the use of computer software.

...
Financial statement. A presentation of financial data, including accompanying notes, derived from accounting records and intended to communicate an entity's economic resources or obligations at a point in time, or the changes therein for a period of time, in accordance with generally accepted accounting principles (GAAP) or an [other comprehensive basis of accounting] OCBOA.

...
Compilation of financial statements. A service, the objective of which is to present in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the financial statements.

c. AR 100.11 states:

Before submission, the accountant should read the financial statements and consider whether such financial statements appear to be appropriate in form and free from obvious material errors. In this context, the term error refers to mistakes in the compilation of financial statements, including arithmetical or clerical mistakes, and mistakes in the application of accounting principles, including inadequate disclosure.

d. AR 100.13 provides, in part, that when the accountant is engaged to report on compiled financial statements or submits financial statements that are reasonably expected to be used by a third party, the financial statements should be accompanied by a report.

e. AR 100.13 further describes the basic elements of the report including, but not limited to, reference to SSARS, statement that the financial statements are the representation of management, the signature of the accountant and the date of the compilation report.

1 f. AR 100.15 states that each page of the financial statements compiled by the
2 accountant should include a reference such as "See Accountant's Compilation
3 Report."

4 g. AR 100.16 provides a form of standard report that is appropriate for a
5 compilation of financial statements prepared in accordance with generally
6 accepted accounting principles.

7 h. AR 100.21 provides, in part, a form of standard report when financial
8 statements that the accountant has compiled omit substantially all disclosures but
9 are otherwise in conformity with generally accepted accounting principles.

10 i. AR 100.23 states, in part, that if the accountant is not independent, he or
11 she should specifically disclose the lack of independence.

12 j. AR 100.24 states, in part, that when an accountant submits unaudited
13 financial statements to his or her client that are not expected to be used by a third
14 party, he or she should either issue a compilation report in accordance with the
15 reporting requirements discussed in paragraphs AR100.13 to 100.23 or document
16 an understanding with the entity through the use of an engagement letter,
17 preferably signed by management, regarding the services to be performed and the
18 limitations on the use of those financial statements.

19 k. AR 100.26 further states that the accountant should include a reference on
20 each page of the financial statements restricting their use such as "Restricted for
21 Management's Use Only," or "Solely for the information and use by the
22 management of [name of entity] and not intended to be and should not be used by
23 any other party."
24
25
26
27
28

1. AR 100.83 states, in part, the when the basic financial statements are accompanied by information presented for supplementary analysis purpose, the accountant should clearly indicate the degree of responsibility, if any, he or she is taking with respect to such information.

FACTS

10. RS and TS engaged the accounting and tax services of Respondent for several years prior to the time that their complaints arose with Respondent. RS and TS owned a liquor store, MVL & D, Inc. Respondent provided bookkeeping and tax services for the liquor store and prepared the RS and TS' personal tax returns. RS and TS sold the liquor store assets in or about 2005, but they retained the corporate entity. Respondent provided additional consulting services to assist RS when he began looking for a replacement business. RS and TS purchased SWW (Company) after consultation with and analysis from Respondent. The Company operated under the corporate entity (i.e., MVL & D, Inc. dba SWW). The Company's operations began in March 2008. Respondent was the complainants' accountant until they terminated his services in mid-September, 2008.

11. Respondent's services were provided under an engagement letter dated August 15, 2003, for the RS and TS' liquor store. The engagement letter provided that the licensee would compile the company's financial statements in accordance with Statements on Standards for Accounting and Review Services (SSARS) without reference to an Other Comprehensive Basis of Accounting (OCBOA). Therefore, the licensee should have issued a report on compiled financial statements that were prepared on the generally accepted accounting principles (GAAP) basis of accounting.

12. The Company maintained its books and records via QuickBooks. Respondent adjusted and re-adjusted the Company's books and records through his online access to the

1 Company's QuickBooks accounts. Respondent adjusted the Company's records based on his
2 calculations or other determination. The computerized files provide the only record of the
3 adjustments. The adjustments reflect that significant balances presented in the financial
4 statements did not conform to GAAP.

5 **FIRST CAUSE FOR DISCIPLINE**
6 **(Gross Negligence)**

7 13. Respondent is subject to disciplinary action under section 5100(c) of the Code in
8 that Respondent was grossly negligent by preparing and issuing compiled financial statements for
9 the Company that contained extreme departures from professional standards. Those acts
10 constituting gross negligence in the performance of the compilation engagements fall into two
11 categories:

12 a. First, Respondent did not comply with reporting requirements for the
13 compilation of the financial statements for the Company in that:

14 (1) The compiled financial statements do not conform to
15 professional standards as follows:

16 (i) An accountant's report was not issued with the
17 financial statements, and

18 (ii) The financial statements submitted to Respondent's
19 clients did not include reference to the accountant's compilation
20 report.

21 (2) The compiled financial statements do not conform to
22 professional standards for an alternative compilation engagement as
23 follows:

24 (i) The Respondent did not document an understanding
25 with the client through the use of an engagement letter regarding
26

1 the services to be performed and the limitations on the use of the
2 financial statements (i.e., in accordance with SSARS No. 8,
3 regarding internal use or management use only financial
4 statements).

5 (ii) The financial statements did not contain a reference
6 that they were restricted for internal or management use's only.
7

8 b. Second, the Respondent failed to consider whether the financial statements
9 appeared to be appropriate in form and free of obvious material errors for the compiled
10 financial statements for the Company for the months of March 2008, April 2008, and the
11 period of March 12, 2008 to May 31, 2008. Thus, Respondent's acts of gross negligence
12 in the performance of the compilation engagements include, for each statement period,
13 changes in equity accounts "Capital Stock" and "Opening Balance Equity" that should not
14 have been adjusted for additional contributions of capital or expenses:
15

16 (1) Capital Stock reflected in the financial statements for the
17 month of March 31, 2008, was \$5,500.00. The financial statements for the
18 period March 31, 2008 – May 31, 2008 reflect that Capital Stock was
19 \$7,839.79 as of March 31, 2008. The general ledger entries include an
20 increase of \$2,339.79, annotated with name of one of owners and "Paid
21 with personal credit card". The adjustment does not reflect the issuance of
22 capital stock based on the transaction description.
23

24 (2) Capital Stock reflected in the financial statements for the
25 month of April 30, 2008, was \$5,500.00. The financial statements for the
26 period March 31, 2008 – May 31, 2008, reflect that Capital Stock was
27 \$8,240.92 as of April 30, 2008. The general ledger entries include the
28

1 previous adjustment of \$2,339.79, an increase of \$500.00, annotated with
2 name of one of the owners and "Paid Toll roads with personal Amex card"
3 and a decrease of \$98.87, annotated as "Washington Mututal" *sic*. The
4 adjustments do not reflect the issuance of capital stock based on the
5 transaction descriptions.

6 (3) Opening Balance Equity reflected in the financial statements
7 for the month of March 31, 2008, was \$1,888.03. However, the financial
8 statements for April 2008 reflect that Opening Balance Equity decreased
9 by \$33,240.88 in April 2008. The account remained unchanged through
10 May 31, 2008, as reflected in the financial statements for the period March
11 31 – May 31, 2008. The QuickBooks information reflected no entries
12 except an opening debit balance of \$31,352.85.

13 (4) The financial statements reflected nonsensical information
14 including, but not limited to the equity accounts/amounts, noted above, the
15 effect of these adjustments on the Statement of Cash Flows for March 31,
16 2008, and April 30, 2008, and different amounts for net income within the
17 same period financial statements for March 31, 2008; for April 30, 2008,
18 and for the period March 12 to May 31, 2008.

19
20
21 **SECOND CAUSE FOR DISCIPLINE**
22 **(Repeated Acts of Negligence)**

23 14. Respondent is subject to disciplinary action under section 5100(c) in that Respondent
24 committed repeated acts of negligence by compiling financial statements on more than one
25 occasion for the Company that each departed from professional standards, as alleged in paragraph
26 13, above, in that the acts of alleged gross negligence also constitute repeated acts of negligence.
27
28

THIRD CAUSE FOR DISCIPLINE
(Failure of Report to Conform to Professional Standards
-Business & Professions Code section 5062)

15. Respondent is subject to disciplinary action under section 5100 of the Code in that Respondent committed acts of unprofessional conduct, described in paragraph 13 above, by violating the requirement set forth in section 5062 of the Code that a licensee's report shall conform to professional standards upon completion of a compilation, review or audit of financial statements. As set forth above, the Respondent's compilation engagements contained extreme and negligent departures from professional standards in that his report was not issued as required under SSARS No. 1, nor was there a written understanding with management that a report would not be provided as required under SSARS No. 8.

FOURTH CAUSE FOR DISCIPLINE
(Failure to Comply with Professional Standards
-Board Rule 58)

16. Respondent is subject to disciplinary action under section 5100 of the Code in that Respondent committed acts of unprofessional conduct, described in paragraph 13 above, by violating the requirement set forth in Board Rule 58 that a licensee shall comply with all professional standards. As set forth above, the Respondent's compilation engagements contained extreme and negligent departures from professional standards in that his report was not issued as required under SSARS No. 1, nor was there a written understanding with management that a report would not be provided as required under SSARS No. 8.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

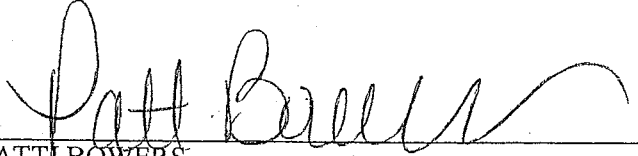
1. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Certificate Number 83513, issued to Eddy John Secco,

1 2. Ordering Eddy John Secco to pay the California Board of Accountancy the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 5107; and

4 3. Taking such other and further action as deemed necessary and proper.

5
6
7 DATED:

November 8, 2011


PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

11 SD2011800564
12 80549942.doc
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28